IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE, JURISDICTION

CRIMINAL APPEAL No. 1123 OF 2003

1.	Ramchandra Alias Rama Lalu Naik Age 26 years, Occu.- Nil, Residing at and post Agarmatha, Kadus, Taluka Khed, District Pune	
2.	Praveen Rajendra Rathod, Age 25 years, Occu.- Cook, Residing at Sajat Road, in front of Tal. Sajat City, District Pali (Rajasthan State) (At present Rakshewadi, Tal.Khed, District Pune.)	
3.	Rajendra Madhukar Hire, Age 25 years, Occu.- Fitter, Resident of Manmad Jin, Badgujar Plot in front of Bungalow of B.S. Patil, Dhule, Dist.- Dhule (At present at Patilwada Manchar, Tal. Ambegaon, District Pune.)	**APPELLANTS** (Original accused Nos.1 to 8)
4.	Mangesh Digambar Salunkhe,Age 23 years, Occu.- Rickshaw driver, Resident of Nehru, Taluka Khed, District Pune. Chowk, Khed, Tal. Khed, Dist.Pune	
5.	Arjun Ganpat Sandbhor, Age 24 years, Occu.- Plumber,Resident of At and Post Tinhewadi (Sandbhorwadi), Taluka Khed, District Pune.	
6.	Pandurang Kisan Pawar, Age 27 years, Occu.- Labour, Resident of Peth, Taluka Ambegaon, District Pune.	
7.	Nitin Gulab Rakshe, Age 25 years, Occu.- Driver, Resident of, AT and Post Anandnagar, Rakshewadi, Tal. Ambegaon, Dist. Pune.	

8. Pardeep Raghunath Jare, Age 26 years, Occu.- Agriculture, Resident of Jarewadi, Tal. Khed, District Pune.)

Vs.

STATE OF MAHARASHTRA) **Respondent** (Original)Complainant)

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Mr. Uday Warunjikar with Balasaheb Bandal, Pravin, Harshal Marathe and Ms.Pallavi Dharmadhikari for Appellants.
Mr.Y.S.Shinde, A.P.P. for State.

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CORAM : SMT. V. K. TAHILRAMANI, J.
DATED : OCTOBER 26, 2005.

ORAL JUDGMENT :

. Through this appeal, appellants i.e. original accused Nos. 1 to 8 have challenged the judgment and order dated 30th August, 2003, passed by the learned Special Judge, Pune, in Special Case No. 9/2002. By the said judgment and order, the learned Special Judge convicted all the appellants under Section 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act (hereinafter referred to as the MCOC Act). For the offence under Section 3(1)(ii) the learned Special Judge sentenced the appellants to suffer rigorous imprisonment for five years and to pay a fine of Rs. 5,00,000/- (Rs. Five Lacs) each, in default to undergo further rigorous imprisonment for one

year. For the offence under Section 3(4) of M.C.O.C.Act the appellants were sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,00,000/- (Rs. Five lacs) each, in default to undergo further rigorous imprisonment for one year.

2. The prosecution case is as under-

. Accused no.1 Ramchandra alias Rama Lalu Naik who hails from Agarmatha, Kadus, Taluka Khed, Dist. Pune, in collusion with accused nos. 2 to 8 and other boys from Taluka Khed, formed an organised crime syndicate. During the period from 1997 to 2001, the accused no.1 to 8 were involved in various cognizable offences, continuing unlawful activities jointly or individually, either as a member of an Organized Crime Syndicate or on behalf of such syndicate, by use of violence, threats or other unlawful means with the object of gaining pecuniary benefit or getting undue economic or other advantage etc.

. In the night of 8-2-2001 accused no.3 Rajendra Hire and three others forcibly took away truck

bearing registration No. MP-09/KB-3417 from Manmad, Pune Road. The said truck was loaded with wheat. They killed truck driver - Rashid Shaikh and threw away his dead body by the side of road in field of sugar-cane crop. They also assaulted the truck cleaner Dhaniram. They tied the arms of cleaner Dhaniram. Dhaniram was also left in that field. Thereafter, in the morning of 8.2.2001 truck cleaner Dhaniram went to Otur police station and made complaint. On the basis of the said complaint, an offence vide C.R. No. "0" of 2001 under Section 396, 397 and 363 of Indian Penal Code was registered with Otur police station. PSI Dhumal (P.W. 16) made investigation into that crime and prepared inquest panchanama of the dead body of truck driver - Rashid Shaikh. He also prepared panchanama of the spot from where the truck was forcibly taken away. As the spot was within the jurisdiction of Manmad Police Station, he sent the case papers to Manmad Police Station.

. In the night in between 9-2-2001 and 10-2-2001 at 3.00 p.m., on receiving information, API Pawar, Dy.S.P. Patil of Khed alongwith police staff, police Naik Chand Muzawar (P.W. 13) and P.H.C.

Govind Damse went to Khandare Vasti and found a jeep which was parked there. The accused Nos. 1 to 8 and one Subhash alias Banergi were found in the jeep. In their possession deadly weapons i.e. two swords, tommy, iron rod, rope etc. was found. Therefore, they were nabbed and an offence vide C.R. No. 6 of 2001 under Section 399 of Indian Penal Code was registered with Manchar Police Station. Thereafter, P.W.17 A.P.I. Dhanwat who was posted at Khed Police Station came to know about the arrest of these accused by police of Manchar Police Station in connection with C.R. No. 6 of 2001. He made inquiry and came to know that all accused Nos. 1 to 8 and some others, who hail from the jurisdiction of his Police Station, i.e. Khed Police Station, formed an organized crime syndicate and they are committing the offences within the jurisdiction of Police Station Khed, Manchar, Manmad and Otur. Therefore, P.W. 17 - A.P.I. Dhanwat collected information about the offences committed by these accused that all these accused, under the leadership of accused No. 1 Ramchandra @ Rama Naik formed an organized Crime Syndicate and committed various offences. Therefore, he prepared report (Exh.54) and

submitted the same to P.W. 19- Mr. Pawar, Special Inspector General of Police, Kolhapur Range, for getting approval to initiate action against these accused under M.C.O.C. Act. His report was submitted to P.W.19 Mr. Pawar, Spl. I.G.P. Kolhapur range, through S.D.P.O. P.W.18 Vijaykumar Magar. On perusal of case papers, Mr. Ramrao Pawar (P.W.19) Special Inspector General of Police, Kolhapur Range, accorded sanction (Exh.68) under Section 23(1)(a) of M.C.O.C. Act to initiate action under M.C.O.C. Act against accused Nos. 1 to 8 and absconding accused Subhash. On receiving sanction (approval) on 7-8-2001 P.I. Pathare (P.W.1) who succeeded A.P.I. Dhanwat (P.W. 17) made complaint (Exh.26) and registered the offence as C.R. No. 29 of 2001 under Section 3(1) and 3(4) of M.C.O.C. Act and handed over the case papers to P.W.18 Dy.S.P. Magar for investigation. As the accused Nos. 1 to 6 were in judicial custody of Additional Sessions Judge, Malegaon, with the permission of Additional Sessions Judge, Malegaon, he arrested them. Likewise, as accused Nos. 7 and 8 were in judicial custody of Additional Sessions Judge, Pune, P.W. 18 Dy.S.P. Magar, with the permission

of Additional Sessions Judge, Pune obtained the custody of accused No. 7 and 8 and arrested them on 17-4-2003. On completion of investigation, P.W.18 Dy. S.P. Magar submitted his report (Exh.70) to the Additional Director General of Police (Law and order), Mumbai, seeking sanction to prosecute the accused as per the provisions of Section 23(2) of M.C.O.C. Act. Report (Exh.70) was submitted through P.W.19 Ramrao Pawar, Special Inspector General of Police Kolhapur Range. On going through the case papers and report (Exh.70), P.W. 20 Om Prakash Bali, the then Additional Director General of Police (Law & Order) on 13-6-2002 accorded sanction (Exh.81). On receipt of sanction (Exh.81), P.W.18 Mr. Magar, Dy.S.P., himself submitted charge sheet against the accused Nos. 1 to 8.

. Thus, it is the prosecution case that accused no.1 who is the leader of the gang, had formed an organized crime syndicate and committed various offences jointly and singly alongwith other accused, who are members of an organised crime syndicate for or on behalf of the said syndicate with use of violence, intimidation and other

unlawful means committed bodily injury thereby resulting in the death of truck driver - Rashid Shaikh with deadly weapons and also for committing other offences for pecuniary gain.

3. Charge Exh. 14 was framed against accused Nos. 1 to 8 under Sections 3(1) (i) & 3(4) of the Maharashtra Control of Organized Crimes Act. All the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial. According to them, false criminal cases are registered against them and on the basis of false criminal cases, they have been falsely involved in this case.

. As far as appellant No.7 Nitin Rakshe and appellant No.8 Pradeep Jare are concerned, their defence is that as far as C.R.No.6 of 2001 of Manchar Police Station is concerned, on the relevant day i.e. on 10.02.2001, they had sought lift in the jeep in which the other accused persons were travelling. They did not know the other accused persons and did not know that there were weapons kept in the said jeep. However, when the jeep came to be stopped by the Police, they

came to be apprehended alongwith the other accused and as they were found with the other accused persons, the Police thought that they belong to the same gang. On account of this, they were also falsely involved in C.R.No.16 of 2001 of Manmad Police Station, which C.R. was registered on 08.02.2001. On 08-02-2001 they were not shown as accused in C.R.No.16 of 2001 of Manmad Police Station, but, it is later on that they came to be shown as accused in the said C.R. on account of being found with the other accused persons on 10.02.2001.

4. I have heard Mr. Uday Warunjikar learned advocate for the appellant and Mr.Shinde, learned Additional Public Prosecutor for the State. I have also perused the record of the present case as well as the judgment and order passed by the learned Special Judge. After carefully considering the matter, I am of the opinion that the conviction of the appellant Nos. 1 to 6 deserves to be confirmed and that of appellant Nos. 7 and 8 deserves to be set aside.

5. P.W.12 P.H.C. G.S.Damse and P.W.13 Police

Naik Mujawar are the witnesses who have deposed about finding of the accused in a jeep. The other two witnesses e.g. P.W.2 panch witness Kandhare and P.W.4 panch witness Thorat have not supported the prosecution. P.W.12 PHC Damse has stated that on 09.02.2002 at about 03:00 a.m., he was on night round duty. At about 3:30 a.m he alongwith others proceeded to Kandhare Vasti, one jeep was found on the road. There were nine persons in the jeep.

Police asked them to come out of the jeep. Thereupon, those persons come out of the jeep. He has mentioned the names of some of the appellants, as the persons who got down from the jeep. This witness has further stated that on search of the jeep, the weapons like swords, daggers, iron bar (Tommy) were found in the jeep. P.W.13 Police Naik Mujawar has stated the same details as P.W.12 PHC Damse. However, this witness does not give the names of any of the persons who got down from the jeep. He states that the persons who got down from the jeep disclosed their names to API Pawar. In relation to this case C.R.No.6 of 2001 under Section 399 of IPC came to be registered.

6. Thereafter, P.W.17 API Dhanwat who was posted at Khed Police Station came to know about the arrest of these accused. He made enquiry with the accused persons and formed opinion that these accused persons formed an organised crime syndicate and they have committed the offences within the jurisdiction of Manchar, Manmad, Otur and Khed Police Stations. Therefore, P.W.17 API Dhanwat collected information about the offences committed by these accused persons and he learnt that all these accused under the leadership of appellant No.1 Ramchandra @ Rama Naik formed an organised crime syndicate and committed various offences. P.W.17 API Dhanwat after collecting the information prepared report (Exh.54) and submitted it to P.W.19 Ramrao Pawar Special Inspector General of Police, Kolhapur Range for getting approval to initiate action against these accused persons under the MCOC Act. All this is stated by P.W.17 API Dhanwat.

7. P.W.19 Spl.I.G.P. Pawar vide his order (Exh.68) accorded sanction under Section 23(1)(a) of the MCOC Act to initiate action under the MCOC

Act. This has come in the evidence of P.W.19 Spl.I.G.P. Pawar.

8. After sanction (Exh.68) was received from P.W.19 Pawar, P.W.1 PI Pathare who succeeded P.W.17 API Dhanwat, made complaint (Exh.26) and registered present offence vide C.R.No.29 of 2001. He then handed over the case papers to P.W.18 Dy.S.P. Magar for investigation. On completion of investigation, P.W.18 Dy.S.P.Magar submitted his report (Exh.70) to P.W.20 Omprakash Bali, the then Additional Director General of Police (Law & Order), Mumbai seeking sanction to prosecute the accused as per the provisions of Section 23(2) of the MCOC Act. P.W.20 Mr.Bali accorded sanction (Exh.81). Thereafter, P.W.18 Dy.S.P.Mr.Magar submitted charge-sheet against the accused persons. The above facts have been brought out in the evidence of P.W.17, P.W.18, P.W.19, P.W.20 and P.W.1.

9. As per the report submitted by P.W.17 API Dhanwat from 1997 to 10-03-2001, 13 crimes in different Police Stations were registered against the members of the gang of which Ramchandra @ Rama

Naik (appellant No.1) was the gang-leader. The charge-sheets have been filed in the said cases and cognizance was taken by the concerned Courts of the said offences. All the offences were punishable with sentences of imprisonment of three years or more. As far as appellant No.1 Ramchandra @ Rama Naik is concerned, he is involved in six cases. Appellant No.2 Pravin Rathod is involved in eight cases. As far as other appellants are concerned, each of them, are involved in atleast in two cases. Appellant Nos.8 & 7 are involved in C.R.No.6 of 2001 of Manchar Police Station and C.R.No.16 of 2001 of Manmad Police Station. The case relating to Manmad is under Sections 395, 396 and 397 of IPC and the case relating to Manchar is under Section 399 of IPC. In these two cases, all the eight appellants are accused.

10. Mr.Warunjikar submitted that in some of these cases, the accused persons have been convicted and some cases are still pending before the Courts. Therefore on the basis of these cases, in the absence of any evidence indicating that the accused formed an organised crime

syndicate, they cannot be held guilty. In reply Mr.Shinde, learned APP submitted that the fact that accused are acquitted in some of the cases is not material. He submitted that acquittal or conviction is not a relevant factor. According to him, as per the definition of Continuing Unlawful Activity if the accused is a member of an organised crime syndicate and more than one charge-sheet for the offences punishable with imprisonment of three years or more have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offences, it is sufficient to attract the provisions of MCOC Act.

11. With relation to the above contention, it would be advantageous to refer to a decision of Division Bench of our Court in the case **"Bharat Shantilal Shah and Ors. Vs. the State of Maharashtra, reported in 2003 Bom.C.R.(Cri) 947",** wherein it has been held that the circumstances of conviction or acquittal are not material to hold a person guilty under the MCOC Act. In the case of Bharat Shah, it is further held as under :

> "We also do not find substance in the challenge that the equality clause in the Constitution is violated because the definition ropes in anyone charged more than once, irrespective of whether the charge resulted in an acquittal or conviction. The circumstances that followed the charge are not material. The provision only defines what is continued unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often. The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person. Not to convict."

. Thus, in view of the settled legal position, though, some of the accused have been acquitted in some of the cases, this fact would be immaterial and it cannot be taken into consideration. As per the definition of Continuing Unlawful Activity as noted above, it is sufficient if the prosecution has proved that such offences have been committed by the accused within the preceding period of ten years and that Court has taken cognizance of such offences.

. In the present case looking to the evidence on record specially that of P.W.17 API Dhanwat, it is seen that this criteria is met with.

12. Thereafter, Mr.Warunjikar submitted that there is no complaint against any of the accused persons to the effect that they have formed organised crime syndicate and they were committing offences using any violence, singly or on behalf of such syndicate. I do not find much merit in this submission as it is not necessary that any private person has to make any complaint against any of the accused persons. The law does not visualise any such situation. It is for the concerned Police to gather information and take action under the MCOC Act so as to curb further crimes by the organised crime syndicate or its members. Thus, it is seen that the complaint by the private person is not required. Moreover, it is also not necessary for any of the accused to commit any offence on the date of complaint or on the date of registration of offence. In order to attract the provisions of MCOC Act, it is not necessary that the accused should commit any organised crime on the date when offence was registered applying the provisions of the MCOC Act. It is sufficient if the prosecution shows that such offences have been committed by the

accused within the period preceding ten years and that the Court has taken cognizance of such offences. The provisions of the MCOC Act are invoked after looking into the antecedents of the accused persons. It is not necessary that fresh crime has to took place for an offence under the MCOC Act to be registered.

13. Thereafter, it was submitted that when all the accused were already in jail, there could be no reason for P.W.17 API Dhanwat to take steps to initiate action under MCOC Act against the accused. Mr.Warunjikar further submitted that only because on 10.02.2001 all the accused were found together in a jeep in which weapons were found and C.R.No.6 of 2001 came to be registered under Section 399 of IPC against the persons in the jeep, on this fact it was not at all necessary for P.W.17 API Dhanwat to initiate action under the MCOC Act. I have carefully considered this submission and I find no force in this submission. P.W.17 API Dhanwat has clearly deposed that when the C.R.No.6 of 2001 of Manchar Police Station under Section 399 of IPC was registered and the accused persons were nabbed, he came to know that

all the accused persons, who hail from his jurisdiction, formed an organised crime syndicate and, therefore, he felt it necessary to collect information about the offences committed by the accused prior to that date. As P.W.17 API Dhanwat was incharge of Khed Police Station, it was his legal duty to collect information about the accused persons in order to curb the activities of the accused and to prevent the accused from committing such offences in future.

14. Mr.Warunjikar further submitted that the investigation in offence under the MCOC Act can only be carried out by a Police Officer not below the rank of Deputy Superintendent of Police. He has submitted that in the present case, P.W.17 API Dhanwat who is not of the requisite rank, has conducted investigation i.e. he has collected information in respect of various accused persons and thereafter he has filed report (Exh.54) which gives details of the cases in which all the accused persons are involved. This report also gives details of the cases including when the charge-sheets were filed. Mr.Warunjikar submitted that entire basis of the cases under MCOC Act

being registered against the accused persons is the report of P.W.17 API Dhanwat. As A.P.I Dhanwat was not a competent person to investigate into the offences under the MCOC Act, the entire prosecution collapsed as the investigation is not by a competent officer. However, on perusal of the evidence, it is seen that P.W.17 API Dhanwat only conducted an enquiry and collected information of the offences committed by the accused persons. An enquiry is different from investigation and gathering material to come to the conclusion whether to register FIR or initiate action under the MCOC Act is different from investigating a case in order to file the charge-sheet. Moreover, it is pertinent to note that at the time when P.W.17 API Dhanwat was making enquiry, the provisions of the MCOC Act had not been invoked. API Dhanwat was not investigating the offences under the MCOC Act, but, he was only seeing whether there was sufficient material to initiate action under the MCOC Act. Thus, I find no merit in this submission.

15. As far as the following six witnesses are

concerned, their evidence is of no use to the prosecution, i.e. P.W.2 panch witness Kandhare, P.W.3 panch witness Khedkar, P.W.4 panch witness Thorat. These witnesses have turned hostile. As far as the remaining three witnesses are concerned i.e. P.W.5 Shelot, P.W.8 Thorat and P.W.9 Rupesh Mandlecha. Their evidence does not implicate any of the appellants in an incriminating manner.

16. As stated earlier, all the accused are involved in atleast two common offences i.e. C.R.No.6 of 2001 of Manchar Police Station and C.R.No.16 of 2001 of Manmad Police Station. Four witnesses have deposed in relation to C.R.No.16 of 2001. The said incident relates to a truck, driver and cleaner of the said truck. The said truck was loaded with wheat. In the night on 08.02.2001 appellant No.3 Rajendra Hire and three others forcibly took away the truck loaded with wheat-bags from Manmad. They killed the truck driver Rashid Shaikh and threw his dead body in the field of sugar-cane crop by the side of the road. They also assaulted the truck cleaner Dhaniram. They tied Dhaniram and left him in the field. Thereafter, Dhaniram managed to free

himself and went to Otur Police Station and made complaint. The said complaint was later transferred to Manmad Police Station. The witnesses in relation to this are P.W.6 panch witness Suryakant Dhaibar, P.W.7 Ghule, P.W.10 Pawar and P.W.11 Waman. P.W.10 Pawar is the panch witness to the scene of offence in respect of the offence relating to the truck driver and the truck; P.W.11 Waman is the panch witness relating to the inquest of the dead body of the driver of the truck; P.W.6 is the panch witness relating to the seizure of the truck; and P.W.7 Ghule runs a hotel at Palkhewadi. He has stated that in the night on 08.02.2001 one truck came near his hotel. When the truck was parked, appellant No.3 Rajendra Hire alongwith 3-4 unknown persons approached to him and told that there is some defect in the truck. Thereafter, appellant No.3 and his companions went towards the truck. He identified appellant No.3 as appellant No.3 runs a garage at Manchar. In the identification parade, this witness identified appellant No.3 Rajendra Hire and appellant No.5 Arjun Sandbhor.

17. Mr.Warunjikar has submitted that for a

accused person to be held guilty under the MCOC Act, there should be some *mens rea*. Mr.Warunjikar has placed reliance on the decision of Apex Court in the case of **"Ranjitsing Sharma Vs. State of Maharashtra & Anr., reported in 2005(2) Crimes 168(SC)"**, wherein it is held in Para-31 that mens rea is a necessary ingredient for commission of a crime under the MCOC Act. So also, Mr.Warunjikar has placed reliance on the decision of this Court in the case of Bharat Shah Vs. State of Maharashtra (Supra). In the said case in Para-66, it is held that provisions of Sections 3 & 4 contemplate the existence of mens rea inherently and shall always be read therein as a necessary ingredient of the offences.

18. As far as appellant Nos.7 & 8 are concerned, Mr.Warunjikar has submitted that they are only involved in two offences i.e. C.R.No.6 of 2001 of Manchar Police Station and C.R.No.16 of 2001 of Manmad Police Station. As far as C.R.No.16 of 2001 is concerned, initially both these appellants were not shown as accused in the said case. But, it is later on that they came to be shown as accused in the said C.R. on account

of being found with the other accused persons on 10.2.2001 at Manchar in respect of which C.R.No.6 of 2001 came to be registered. In C.R.No.6 of 2001, both these appellant Nos.7 & 8 i.e. Nitin Rakshe and Pradip Jare came to be arrested as they were found in the jeep in which other accused persons were travelling and in the said jeep some weapons came to be found. Mr.Warunjikar has submitted that it is the specific defence of appellant Nos.7 & 8 in respect of C.R.No.6 of 2001 that on the relevant day i.e. on 10.2.2001, they had sought a lift in the jeep in which the other accused persons were travelling. Both appellant Nos.7 & 8 did not know the other accused persons, moreover, they did not know that there were weapons in the said jeep. When this jeep came to be stopped and searched by the Police, some weapons came to be found in the said jeep, and alongwith other accused persons appellant Nos.7 & 8 also came to be apprehended as the Police thought they belonged to the same gang. Mr.Warunjikar has submitted that on account of being found with the other accused persons in C.R.No.6 of 2001, appellant Nos.7 & 8 came to be falsely involved in C.R.No.16 of 2001 of Manmad

Police Station. Therefore, on 8.2.2001 when C.R.No.16 of 2001 of Manmad Police Station came to be registered, appellant Nos.7 & 8 were not shown as accused in the said C.R., but, it is later on that they came to be shown as accused in the said C.R. on account of being found with the other accused persons on 10.2.2001 at Manchar.

19. Mr.Warunjikar has submitted that appellant Nos.7 & 8 have been involved in the present case only on the basis of their alleged involvement in C.R.No.6 of 2001 and C.R.No.16 of 2001. Mr.Warunjikar further submitted that as far as C.R.No.16 of 2001 is concerned, the perusal of the papers relating to the said case show that none of the witnesses have identified appellant Nos.7 & 8 as being involved in any manner in the said case. It is seen that none of the witnesses in the present case have stated about any role being played by appellant Nos.7 & 8 in relation to C.R.No.16 of 2001. As far as C.R.No.6 of 2001 is concerned, appellant Nos.7 & 8 were not found in possession of any weapons. The evidence on record shows that the weapons were found concealed in the jeep. As far as the incident pertaining to

C.R.No.6 of 2001 of Manchar Police Station is concerned, the panch witnesses i.e. P.W.2 Kandhare and P.W.4 Thorat have not supported the prosecution. The other witnesses who were present at that time were P.W.12 PHC Damse, P.W.13 Police Naik Mujawar and A.P.I. Pawar. P.W.12 PHC Damse has stated that on 9.2.2002 at about 3:00 a.m. he was on night duty. At about 3:30 a.m., one jeep was found on the road at Kandhare Vasti. There were some persons in the jeep. The police asked them to come out of the jeep. Thereupon, nine persons who were in jeep came out. P.W.12 PHC Damse has mentioned the names of all the appellants except that of appellant No.8 Pradip Jare. P.W.13 Police Naik Mujawar has stated the same details as PHC Damse. However, Police Naik Mujawar does not give the names of any of the persons who came out of the jeep. P.W.13 Police Naik Mujawar has stated that the persons who got down from the jeep disclosed their names to API Pawar. It is pertinent to note that API Pawar has not been examined in the present case. Thus, as far as appellant No.8 is concerned, no witnesses have stated that he was one of the persons who were in the jeep alongwith the other accused

persons.

20. As far as appellant No.7 is concerned, though, he has been named by P.W.12 PHC Damse, looking to the specific defence raised by appellant Nos.7 & 8 that they had taken a lift in the jeep in which other accused persons were travelling, and the evidence on record it cannot be said that appellant No.8 had any mens rea. I have already observed that none of the witnesses have stated about the involvement of appellant No.7 - Nitin Rakshe in the incident relating to C.R.No.6 of 2001 i.e. he was one of the persons in the jeep. As far as other C.R. i.e. C.R.No.16 of 2001 is concerned, no witness has stated about any role at all being played by appellant Nos.7 or 8 in the said case. In relation to C.R.No.16 of 2001, from the evidence on record, no mens rea can be inferred on the part of these two accused persons i.e. appellant Nos.7 & 8. As far as C.R.No.6 of 2001 is concerned, it is pertinent to note that no weapons were found in the hands of these appellants or with the other accused persons. The weapons were found concealed in the jeep. Thus, when appellant Nos.7 & 8 took

a lift in the said jeep, there was no reason for them to suspect that anything was wrong or amiss. So also looking to the defence taken by these two appellants i.e. appellant Nos. 7 & 8 and the evidence on record, no mens rea can be inferred in respect of these two accused persons in C.R.No.6 of 2001.

21. No doubt mens rea is a necessary ingredient for the commission of a crime under the MCOC Act. As far as mens rea is concerned, it is not necessary that there should be any specific evidence to show that a particular accused had the necessary mens rea. Just as in a case of criminal conspiracy so also where mens rea is concerned it is difficult to get any direct evidence and its existence has to be inferred from the facts and circumstances, preceding the offence, at the time of offence or immediately after the offence. Thus, mens rea can even be inferred from the facts and circumstances of the case. As far as appellant No.1 is concerned, he is the gang leader. As far as appellant Nos.2 to 6 are concerned, there is sufficient evidence on record to show that they were indulging in organised

crime alongwith appellant No.1. However, the case of appellant Nos.7 & 8 stands on a different footing. First of all it is their specific defence that they were not connected with other appellants in any manner specially appellant No.1 and they happened to be in the jeep only because they had sought a lift in the said jeep. The evidence on record is also not sufficient to infer that they had the requisite mens rea. Thus, looking to the evidence on record, appellant Nos. 7 & 8 deserve to be given the benefit of doubt. As far as other appellants are concerned, there is sufficient material on record to hold them guilty under Section 3(1)(ii) and 3(4) of the MCOC Act.

22. In the result, the appeal is partly allowed. The conviction and sentence dated 30.8.2003 imposed on the appellants Nos.1 to 6 by the learned Special Judge under MCOC Act, Pune in Special Case No.9 of 2002 is confirmed. The conviction and sentence as imposed by the learned Special Judge against the appellants Nos.7 & 8 is set aside. They are acquitted thereunder. They shall be released forthwith if not required in any other case.

(SMT.V.K.TAHILRAMANI,J.)